

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3244 of 2004

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Date:26.03.2015

Between:

Jullala Narasimlu

... Appellant.

AND

Sri Jillela Gangaiah and another.

.....Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3244 of 2004

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JUDGMENT:

This appeal is preferred against order dated 20-02-2004 in W.C. Case No.18/2003 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Nizamabad.

2. Briefs facts leading to this appeal are as follows:-

The appellant herein submitted application under Section 22 of Workmen's Compensation Act claiming a sum of Rs.5,00,000/- as compensation contending that on 18-12-2000, while he was under employment of first respondent herein, on tractor bearing AP 25 E 491, which met with an accident and that resulted multiple fractures to right wrist, right hand ribs and multiple injuries on head and other parts of the body. Insurance Company filed counter disputing the claim of the appellant and Assistant Commissioner of Labour, Nizamabad conducted enquiry during which, two witnesses are examined and six documents are marked on behalf of claimants and no witness is examined, but one document is marked on behalf of Insurance Company and on a over all consideration of oral and documentary evidence, granted a sum of Rs.1,20,263/- by taking the wages of the claimant at Rs.2,000/- per month and loss of earning capacity at 45%. Aggrieved by the quantum, claimant preferred present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that lower authority has granted a meager sum of Rs.1,20,263/- though the claim is entitled for Rs.5,00,000/-. He submitted that claimant deposed in his evidence that he is getting Rs.4,000/- per month besides batta of Rs.100/- per day, but lower authority has taken only Rs.2,000/- per month as wages of the claimant. He submitted that the minimum wages as on the date of accident are not even taken into consideration, which are

more than Rs.2,000/-. He further submitted that lower authority has not granted any interest on the compensation amount. He further submitted that the lower authority took loss of earning capacity at 45% only though the opinion of the Medical Officer is that the appellant sustained loss of earning capacity at 55%. He submitted that the claim of the appellant for Rs.5,00,000/- is reasonable and the appeal has to be allowed.

5. Now the point that would arise for my consideration in this appeal is whether the order dated 20-02-2014 in

W.C. Case No.18/2003 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Nizamabad is legal, proper and correct?

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6. **Point:-** There is no dispute with regard to accident dated 18-12-2000 in which, the appellant sustained injuries and there is also no dispute with regard to relationship of employee and employer between the appellant and first respondent herein. The appellant himself is examined as P.W.1 and Dr. T. Narsing Rao an Orthopedic Surgeon is examined as P.W.2. It is the evidence of Medical Officer that he examined the claimant and on verification of the medical record including physical examination, he assessed partial and permanent disability at 45% and loss of earning capacity at 55%.

He deposed that he issued Ex.A6-disability certificate though this witness was cross-examined on behalf of the Insurance Company, except putting suggestions, nothing was elicited from him with regard to disability assessed by him. Lower authority, considering the evidence of P.W.2 and also considering the other material, assessed loss of earning capacity at 45% for the purpose of calculating compensation. Admittedly, the disability certificate is not issued by Medical Board constituted by the Government. P.W.2 is only a private Doctor and he is not the Doctor who treated the claimant and his evidence is based only on the medical record produced by the

claimant. Considering the injuries and evidence of P.W.2, loss of earning capacity was assessed at 45% and I do not find any wrong in the approach of the lower authority for arriving at percentage of 45%, therefore, the objection of the appellant on this score cannot be sustained.

7. The other objection of the appellant is that claimant pleaded that he is getting wages of Rs.4,000/- with batta of Rs.100/- per day, but the lower authority without considering the same, unilaterally fixed Rs.2,000/- as wages of the appellant. Advocate for appellant submitted that as per G.O.Ms.No.81, Labour, Employment, Training and Factories Department, dated 02-12-2000, the minimum wages for the employees in private motor transport are fixed and according to which, the minimum wage for a light motor vehicle driver is Rs.2,370/- and therefore, the wages fixed by lower authority at Rs.2,000/- per month is not at all correct. Admittedly, tractor is a light motor vehicle as per the provisions of Motor Vehicles Act, 1988. As per the G.O., referred to above, the minimum wages of a light motor vehicle driver in a private motor transport is Rs.2,370/-. As rightly pointed out by Advocate for appellant at least this amount has to be taken as wages of the appellant for the purpose of calculating compensation. So if the compensation is calculated by taking Rs.2,370/- as wage of the claimant, it comes to Rs.1,42,512/- ($\text{Rs.2,370/-} \times 60/100 \times 222.71 \times 45/100$) and the appellant is entitled for this amount as compensation.

8. The other contention of appellant is that lower authority has not granted any interest. As per the decision of the Hon'ble Supreme Court in **Saberabibi Yakubbbhai Shaikh and others vs. National Insurance Company Limited and others**, the appellant is entitled for interest. As per the provisions of the Act, the clamant is entitled for interest if the amount is not deposited within 30 days as assessed by the lower authority, therefore, the appellant is entitled for interest at

12% per annum on the compensation amount and the Insurance Company shall deposit the difference compensation amount and interest, if any, within 30 days from the date of receipt of this order.

9. Appeal is allowed accordingly. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:26.03.2015

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